



Update for Strategic Plan and Policy Subcommittee

Requested Action. Provide feedback and direction to staff regarding the Strategic Plan, proposed Climate Change Policy, and proposed federal legislation.

Strategic Plan

Conservancy staff and consultants are finishing up their first round of interviews with Board members and liaisons, county agricultural commissioners, and other stakeholder groups. Public meetings begin January 25 and run through February 9:

Solano County

Rush Ranch, Solano Land Trust
3521 Grizzly Island Road
Suisun City, CA
January 25, 2012 (Wednesday)
3:30pm-5:30pm

Sacramento County

Peter's Steakhouse
203 2nd Street
Isleton, CA
January 26, 2012 (Thursday)
3:30pm-5:30pm

Yolo County

Clarksburg Community Church
52910 Netherlands Road
Clarksburg, CA
January 28, 2012 (Saturday)
1:00pm-3:00pm

Contra Costa County

Antioch Community Center
4703 Lone Tree Way
Antioch, CA
February 7, 2012 (Tuesday)
3:30pm-5:30pm

San Joaquin County

San Joaquin WorkNet Building
56 S. Lincoln Street
Stockton, CA
February 9, 2012 (Thursday)
3:30pm-5:30pm

The Conservancy is publicizing these meetings through its list serve announcements, its webpage, and with press releases. The subcommittee requested that staff email a copy of the press release to all Board members as well (Attachment 1).

The consultants are on track to present a draft strategic plan to the subcommittee at its next meeting on February 13, 2012.

The Executive Fellows team is also making progress on their special project regarding enforcement issues that may arise from increased recreation and tourism in the Delta. Initial research is underway, and the fellows will begin interviews in early January.

Potential Federal Legislation

Congressman John Garamendi's office sent a copy of his discussion draft legislation regarding the National Flood Insurance Program, Floodplains, and Agricultural Structures. The subcommittee discussed the packet and asked staff to schedule a presentation by the congressman's staff for the February meeting (Attachment 2).

Melinda Terry provided a copy of an analysis of the draft proposal created by the Coalition for the Creation of an Agricultural Flood Hazard Area under the National Flood Insurance Program. She said that most support now is in the north-of-the-Delta, but that this a national issue as well (Attachment 3).

Climate Change Policy

The draft Delta Conservancy Climate Change Policy and Guideline reflects comments from December's meeting and staff changes. Conservancy counsel has reviewed the policy document as well.

During discussion, staff clarified that this document is not criteria for selecting proposals, but is the first step in establishing criteria since any project the Conservancy may participate in must meet the California Environmental Quality Act (CEAQ) requirements, which include those regarding green house gases.

The subcommittee suggested staff add an introductory clarifying the purpose of the policy and guidelines. The subcommittee agreed that more discussion is needed before it is approved, decided to send it to the Board for review and discussion at the Board's January meeting. The subcommittee expects to complete the document for March Board meeting approval.

Public Comments

There were no public comments.

Attachments

Attachment .1: Public Meetings Press Release
Attachment .2: Discussion Draft Legislation regarding National Flood Insurance Program
Attachment .3: Coalition Handout regarding National Flood Insurance Program

Contact

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News Release

FOR IMMEDIATE RELEASE

January 10, 2012

CONTACT: Susan Roberts

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Public Input Sought to Develop Delta Conservancy's Strategic Plan

WEST SACRAMENTO – The Delta Conservancy encourages Delta residents and others with interests in the Delta to share their ideas about the roles and priorities for the Conservancy's strategic plan at any of five scheduled meetings. The meetings are January 25 through February 9, one in each of the five Delta counties. To better accommodate the needs of residents, meetings are held late afternoon, with one mid-afternoon meeting scheduled on Saturday, January 28.

Meeting locations, dates and times are:

Solano County

Rush Ranch, Solano Land Trust
3521 Grizzly Island Road
Suisun City, CA
January 25, 2012 (Wednesday)
3:30pm-5:30pm

Contra Costa County

Antioch Community Center
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1:00pm-3:00pm

“It is critically important to us that Delta residents let us know what they want and need as the Conservancy forms how it will pursue its mandates over the next 5 to 10 years,” said Campbell Ingram, executive officer of the Conservancy.

Other forums in which the public may comment about the strategic plan include the Conservancy Board’s January 18 Board meeting and the February 13 Strategic Plan and Policy Subcommittee meeting. The Board meeting is scheduled 9 a.m. to noon, at the West Sacramento Community Center, 1075 West Capitol Avenue; the subcommittee meeting is scheduled 3-5 p.m. in Room 119 at the Conservancy’s office, 3500 Industrial Blvd., West Sacramento. Please see www.deltaconservancy.ca.gov for details. For people who do not want to participate in the public meetings, a written comment period on the public draft document is scheduled for spring 2012. The final Strategic Plan will be completed by June 30, 2012.

The Conservancy was formed in 2010 through the Sacramento-San Joaquin Delta Conservancy Act. Under its enabling legislation, the Conservancy is responsible for supporting efforts that advance environmental protection and the economic well-being of Delta residents in a complementary manner. In addition to these two “co-equal responsibilities,” the Conservancy has 12 mandates to consider (available at www.deltaconservancy.ca.gov).

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The Delta Conservancy invites community members to attend its board meeting in Isleton on Wednesday, November 16, 2011, 9:00 am to 12:00 pm at Peter's Steakhouse, 203 2nd Street,

Isleton. Agenda items include:

- Strategic Plan Process Implementation Plan
- “Changing Our Perspective” Roundtable Report
- “Improving Resilience in the Delta” panel, featuring representatives from the Army Corps of Engineers, Reclamation Districts and Volunteer Fire Departments
- Delta Plan Update, Joe Grindstaff, Delta Stewardship Council
- Economic Sustainability Plan Update, Mike Machado, Delta Protection Commission
- Bay Delta Conservation Plan Update, Karla Nemeth

Questions about the board meeting can be directed to Susan Roberts at 916-375-2088.

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Potential Topics for Discussion Delta Conservancy Strategic Plan Development

Background:

- The Conservancy's statutory role
- Geographic scope: the legal Delta
- Fulfilling co-equal responsibilities
- 12 legislative mandates [see below]
- Consistency with other plans

The Sacramento-San Joaquin Delta Conservancy (Conservancy), a State conservancy created in 2009 by the Water Reform Act (SBX 7-1), has two co-equal responsibilities: "...act as a primary state agency to implement ecosystem restoration in the Delta" and "support efforts that advance environmental protection and the economic well-being of Delta residents". The Conservancy is in the process of developing its strategic plan as mandated by the legislature. This process is intended to clarify and accurately define the Conservancy's roles in meeting its co-equal responsibilities. The statute contains the following direction from the legislature about potential roles and areas of focus for the Conservancy:

Chapter 3. Sacramento-San Joaquin Delta Conservancy

32320. There is in the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy, which is created as a state agency to work in collaboration and cooperation with local governments and interested parties.

32322. (a) The conservancy shall act as a primary state agency to implement ecosystem restoration in the Delta.

(b) The conservancy shall support efforts that advance environmental protection and the economic well-being of Delta residents, including all of the following:

- (1) Protect and enhance habitat and habitat restoration.*
- (2) Protect and preserve Delta agriculture and working landscapes.*
- (3) Provide increased opportunities for tourism and recreation in the Delta.*
- (4) Promote Delta legacy communities and economic vitality in the Delta, in coordination with the Delta Protection Commission.*
- (5) Increase the resilience of the Delta to the effects of natural disasters such as floods and earthquakes, in coordination with the Delta Protection Commission.*
- (6) Protect and improve water quality.*
- (7) Assist the Delta regional economy through the operation of the conservancy's program.*
- (8) Identify priority projects and initiatives for which funding is needed.*

(9) Protect, conserve, and restore the region's physical, agricultural, cultural, historical, and living resources.

(10) Assist local entities in the implementation of their habitat conservation plans (HCPs) and natural community conservation plans (NCCPs).

(11) Facilitate take protection and safe harbor agreements under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code) for adjacent landowners and local public agencies.

(12) Promote environmental education through grant funding.

(c) When implementing subdivision (b), the conservancy shall under-take efforts to enhance public use and enjoyment of lands owned by the public.

Scenarios:

The Conservancy's strategic plan team has developed four draft scenarios (A-D) and will be looking for your input about roles the Conservancy might play in the context of these scenarios. Here is some basic information:

The near-term operational context (before 2020) for the Sacramento-San Joaquin Delta Conservancy will be heavily shaped by two critical variables:

- 1. The passage (or not) by California voters of the 2012 water and ecosystem bond*
- 2. The timely completion and coming-into-force (or not) of five affiliated plans¹ which collectively will set the regulatory context in which the Conservancy will operate.*

These variables can be visualized in a matrix, leading to four possible near-term futures:

	<i>Plans in force on time</i>	<i>Plans not in force on time</i>
<i>Bond passes</i>	Strong regulatory drivers High funding (A)	Weak regulatory drivers High funding (B)
<i>Bond does not pass</i>	Strong regulatory drivers Low funding (C)	Weak regulatory drivers Low funding (D)

¹ The Bay Delta Conservation Plan, the Delta Plan, the Delta Protection Commission's Resource Management Plan, the Central Valley Flood Protection Plan, and the Habitat Management, Preservation and Restoration Plan for the Suisun Marsh.

Potential topics for discussion:

- Potential roles for the Conservancy in the Delta that would complement and support your agency's (or your county's) mission and activities?
 - Specific activities the Conservancy might initiate or support that would have the potential for making your agency or organization more successful in the Delta
- Focusing the Conservancy's available resources over the next five years: what specific roles and activities, and why?
- Identify *gaps* in current state and local agency efforts involving (1) ecosystem restoration, or (2) the Delta economy, that the Conservancy should focus on filling
- *Measures of success or progress* the Conservancy should consider adopting, and why
- Possible *criteria* the Conservancy should consider adopting to assist in its decision making about where to focus its resources
 - *Example of a possible criterion: Ecosystem restoration projects that have a demonstrable benefit to the Delta economy will be a priority.*
- Opportunities for the Conservancy to support your interests in the Delta, e.g., as a landowner, a land manager, or an agricultural producer
- Specific segments of the Delta's economy the Conservancy could usefully support over the next five years
- Specific opportunities for mutual benefits in the Delta
- *Priorities* do you see among the Conservancy's 12 legislative mandates identified in the Conservancy's legislation over the next five years; is there an obvious "top 3," for example?
- *Linkages or relationships* among the Conservancy's 12 mandated program areas; can they be usefully organized into three or four broad categories, or by priority?

Attachment 10.1.3

Delta Conservancy Strategic Plan Public Meeting Venues and Schedule

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Rush Ranch, Solano Land Trust
3521 Grizzly Island Road
Suisun City, CA
January 25, 2012 (Wednesday)
3:30pm-5:30pm

Sacramento County

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Office of Congressman John Garamendi

**Information Packet
Of
Discussion Draft Legislation
Regarding
National Flood Insurance
Program, Floodplains,
Agricultural Structures**

This Document Was Last Updated: December 1, 2011

By: Josh Franco, josh.franco@mail.house.gov, 202-570-3179 or 707-438-1822

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Letter from Congressman John Garamendi to Stakeholders

December 1, 2011

Dear Stakeholder,

Many farmers in my Delta community have asked me to help them with a serious problem. As the Federal Emergency Management Agency (FEMA) continues its studies of the levee systems that protect agricultural land in the region, many of the levees have been downgraded.

Until the levees are improved, farmers in many places are unable to build new or upgrade existing agricultural structures necessary to conduct or increase production and business.

Without a legislative solution or significant federal investment to improve levees, the agricultural economy of the region will be limited and opportunities for growth will be forgone.

In our study of this issue, we have determined that an exemption to the National Flood Insurance Program (NFIP) for agricultural structures in specific flood zones is the best and least expensive way to address the problem.

The enclosed discussion draft legislation is designed to do just that and allow farmers to continue to farm, build necessary agricultural structures and provide a solid economic base for their regions, California and the nation. The legislation also allows farmers to obtain subsidized flood insurance on existing and new agricultural structures in these zones.

I intend to introduce legislation in January 2012. Your comments on the discussion draft would be helpful. Please share your comments with Josh Franco, josh.franco@mail.house.gov, by Tuesday, January 10, 2012.

Sincerely,



JOHN GARAMENDI
Member of Congress

[DISCUSSION DRAFT]112TH CONGRESS
1ST SESSION**H. R.** _____

To amend the National Flood Insurance Act of 1968 to allow the construction and improvement of structures used solely for agricultural production in floodplains.

IN THE HOUSE OF REPRESENTATIVES

Mr. GARAMENDI introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the National Flood Insurance Act of 1968 to allow the construction and improvement of structures used solely for agricultural production in floodplains.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “_____ Act
5 of 2011”.

1 **SEC. 2. FLOOD INSURANCE PROGRAM TREATMENT OF NEW**
2 **OR SUBSTANTIALLY IMPROVED AGRICUL-**
3 **TURAL STRUCTURES LOCATED IN**
4 **FLOODPLAINS.**

5 (a) FLOODPLAIN MANAGEMENT CRITERIA.—Section
6 1361 of the National Flood Insurance Act of 1968 (42
7 U.S.C. 4102) is amended by adding at the end the fol-
8 lowing new subsection:

9 “(d) TREATMENT OF AGRICULTURAL STRUC-
10 TURES.—After the date of the enactment of this sub-
11 section, the comprehensive criteria for land management
12 and use established pursuant to this section may not pro-
13 hibit, limit, restrict, or condition, including requiring any
14 floodproofing or flood damage mitigation activities or fea-
15 tures with respect to, the new construction or substantial
16 improvement of any agricultural structure (as such term
17 is defined in section 1315(a)(2)(D)) in any area identified
18 by the Director as having special flood hazards, except to
19 the extent provided in section 1315(a)(2).”.

20 (b) AVAILABILITY OF FLOOD INSURANCE COVERAGE
21 AND CHARGEABLE RATES.—Section 1308 of the National
22 Flood Insurance Act of 1968 (42 U.S.C. 4015) is amend-
23 ed—

24 (1) in subsection (c), in the matter preceding
25 paragraph (1), by inserting “of this subsection and
26 to subsection (g)” before the comma; and

1 (2) by adding at the end the following new sub-
2 section:

3 “(g) NEW CONSTRUCTION AND SUBSTANTIAL IM-
4 PROVEMENT OF AGRICULTURAL STRUCTURES.—Subject
5 to section 1315(a)(2)(B) and notwithstanding any other
6 provision of this Act, the Director shall make flood insur-
7 ance coverage available upon request for any agricultural
8 structure described in section 1361(d) that is located in
9 any area identified by the Director as having special flood
10 hazards. Such coverage shall be made available at charge-
11 able premium rates that are based on estimated rates
12 under section 1307(a)(2) and are consistent with the pro-
13 visions of section 1308((b)(2) applicable to such rates.”.

Section-by-Section Analysis of Discussion Draft Legislation

Section 1: Short Title

This section gives the bill the short title, "_____".

Section 2: Flood insurance Program Treatment of New or Substantially Improved Agricultural Structures Located in Floodplains.

This section does the following:

- Allows new and substantially improved agricultural structures to be built in floodplains by exempting such structures from existing criteria
- Requires FEMA to provide flood insurance coverage upon request for new and substantially improved agricultural structures

How does Rep. Garamendi's Discussion Draft Legislation re: National Flood Insurance Program, Floodplains, Agricultural Structures, dated November 29, 2011, Amend Existing Law?

DISCUSSION DRAFT, SECTION 2(A) ADDS FOLLOWING TO TITLE 42 > CHAPTER 50 > SUBCHAPTER III > § 4102:

“(d) TREATMENT OF AGRICULTURAL STRUCTURES.—After the date of the enactment of this subsection, the comprehensive criteria for land management and use established pursuant to this section may not prohibit, limit, restrict, or condition, including requiring any floodproofing or flood damage mitigation activities or features with respect to, the new construction or substantial improvement of any agricultural structure (as such term is defined in section 1315(a)(2)(D)) in any area identified by the Director as having special flood hazards, except to the extent provided in section 1315(a)(2).”.

DISCUSSION DRAFT, SECTION 2(B)(1) ADDS HIGHLIGHTED TO TITLE 42 > CHAPTER 50 > SUBCHAPTER I > § 4015:

(c) Actuarial rate properties

Subject only to the limitations provided under paragraphs (1) and (2) of this subsection and to subsection (g), the chargeable rate shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section 4014 (a)(1) of this title with respect to the following properties:

DISCUSSION DRAFT, SECTION 2(B)(2) ADDS FOLLOWING TO TITLE 42 > CHAPTER 50 > SUBCHAPTER I > § 4015:

“(g) NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENT OF AGRICULTURAL STRUCTURES.—Subject to section 1315(a)(2)(B) and notwithstanding any other provision of this Act, the Director shall make flood insurance coverage available upon request for any agricultural structure described in section 1361(d) that is located in any area identified by the Director as having special flood hazards. Such coverage shall be made available at chargeable premium rates that are based on estimated rates under section 1307(a)(2) and are consistent with the provisions of section 1308(b)(2) applicable to such rates.”.

What Existing Law does Rep. Garamendi's *Discussion Draft Legislation re: National Flood Insurance Program, Floodplains, Agricultural Structures, dated November 29, 2011, Cite or Amend?*

TITLE 42 > CHAPTER 50 > SUBCHAPTER III > § 4102. Criteria for land management and use

(a) Studies and investigations

The Director is authorized to carry out studies and investigations, utilizing to the maximum extent practicable the existing facilities and services of other Federal departments or agencies, and State and local governmental agencies, and any other organizations, with respect to the adequacy of State and local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention, and may enter into any contracts, agreements, or other appropriate arrangements to carry out such authority.

(b) Extent of studies and investigations

Such studies and investigations shall include, but not be limited to, laws, regulations, or ordinances relating to encroachments and obstructions on stream channels and floodways, the orderly development and use of flood plains of rivers or streams, floodway encroachment lines, and flood plain zoning, building codes, building permits, and subdivision or other building restrictions.

(c) Development of comprehensive criteria designed to encourage adoption of adequate State and local measures

On the basis of such studies and investigations, and such other information as he deems necessary, the Director shall from time to time develop comprehensive criteria designed to encourage, where necessary, the adoption of adequate State and local measures which, to the maximum extent feasible, will

- (1) constrict the development of land which is exposed to flood damage where appropriate,
- (2) guide the development of proposed construction away from locations which are threatened by flood hazards,
- (3) assist in reducing damage caused by floods, and
- (4) otherwise improve the long-range land management and use of flood-prone areas, and he shall work closely with and provide any necessary technical assistance to State, interstate, and local governmental agencies, to encourage the application of such criteria and the adoption and enforcement of such measures.

DISCUSSION DRAFT, SECTION 2(A) ADDS:

“(d) TREATMENT OF AGRICULTURAL STRUCTURES.—After the date of the enactment of this subsection, the comprehensive criteria for land management and use established pursuant to this section may not prohibit, limit, restrict, or condition, including requiring any floodproofing

or flood damage mitigation activities or features with respect to, the new construction or substantial improvement of any agricultural structure (as such term is defined in section 1315(a)(2)(D)) in any area identified by the Director as having special flood hazards, except to the extent provided in section 1315(a)(2). ”.

TITLE 42 > CHAPTER 50 > SUBCHAPTER I > § 4022. State and local land use controls

(a) Requirement for participation in flood insurance program

(1) In general

After December 31, 1971, no new flood insurance coverage shall be provided under this chapter in any area (or subdivision thereof) unless an appropriate public body shall have adopted adequate land use and control measures (with effective enforcement provisions) which the Director finds are consistent with the comprehensive criteria for land management and use under section [4102](#) of this title.

(2) Agricultural structures

(A) Activity restrictions

Notwithstanding any other provision of law, the adequate land use and control measures required to be adopted in an area (or subdivision thereof) pursuant to paragraph (1) may provide, at the discretion of the appropriate State or local authority, for the repair and restoration to predamaged conditions of an agricultural structure thatô

- (i) is a repetitive loss structure; or
- (ii) has incurred flood-related damage to the extent that the cost of restoring the structure to its predamaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(B) Premium rates and coverage

To the extent applicable, an agricultural structure repaired or restored pursuant to subparagraph (A) shall pay chargeable premium rates established under section [4015](#) of this title at the estimated risk premium rates under section [4014 \(a\)\(1\)](#) of this title. If resources are available, the Director shall provide technical assistance and counseling, upon request of the owner of the structure, regarding wet flood-proofing and other flood damage reduction measures for agricultural structures. The Director shall not be required to make flood insurance coverage available for such an agricultural structure unless the structure is wet flood-proofed through permanent or contingent measures applied to the structure or its contents that prevent or provide resistance to damage from flooding by allowing flood waters to pass through the structure, as determined by the Director.

(C) Prohibition on disaster relief

Notwithstanding any other provision of law, any agricultural structure repaired or restored pursuant to subparagraph (A) shall not be eligible for disaster relief assistance under any program administered by the Director or any other Federal agency.

(D) Definitions

For purposes of this paragraphô

- (i) the term ôagricultural structureö means any structure used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities; and

(ii) the term "agricultural commodities" means agricultural commodities and livestock.

(b) Community rating system and incentives for community floodplain management

(1) Authority and goals

The Director shall carry out a community rating system program, under which communities participate voluntarily

(A) to provide incentives for measures that reduce the risk of flood or erosion damage that exceed the criteria set forth in section [4102](#) of this title and evaluate such measures;

(B) to encourage adoption of more effective measures that protect natural and beneficial floodplain functions;

(C) to encourage floodplain and erosion management; and

(D) to promote the reduction of Federal flood insurance losses.

(2) Incentives

The program shall provide incentives in the form of credits on premium rates for flood insurance coverage in communities that the Director determines have adopted and enforced measures that reduce the risk of flood and erosion damage that exceed the criteria set forth in section [4102](#) of this title. In providing incentives under this paragraph, the Director may provide for credits to flood insurance premium rates in communities that the Director determines have implemented measures that protect natural and beneficial floodplain functions.

(3) Credits

The credits on premium rates for flood insurance coverage shall be based on the estimated reduction in flood and erosion damage risks resulting from the measures adopted by the community under this program. If a community has received mitigation assistance under section [4104c](#) of this title, the credits shall be phased in a manner, determined by the Director, to recover the amount of such assistance provided for the community.

(4) Reports

Not later than 2 years after September 23, 1994, and not less than every 2 years thereafter, the Director shall submit a report to the Congress regarding the program under this subsection. Each report shall include an analysis of the cost-effectiveness of the program, any other accomplishments or shortcomings of the program, and any recommendations of the Director for legislation regarding the program.

(c) Replacement of mobile homes on original sites

(1) Community participation

The placement of any mobile home on any site shall not affect the eligibility of any community to participate in the flood insurance program under this chapter and the Flood Disaster Protection Act of 1973 (notwithstanding that such placement may fail to comply with any elevation or flood damage mitigation requirements), if

(A) such mobile home was previously located on such site;

(B) such mobile home was relocated from such site because of flooding that threatened or affected such site; and

(C) such replacement is conducted not later than the expiration of the 180-day period that begins upon the subsidence (in the area of such site) of the body of water that flooded to a level considered lower than flood levels.

(2) Definition

For purposes of this subsection, the term "mobile home" has the meaning given such term in the law of the State in which the mobile home is located.

TITLE 42 > CHAPTER 50 > SUBCHAPTER I > § 4015. Chargeable premium rates

(a) Establishment; terms and conditions

On the basis of estimates made under section [4014](#) of this title, and such other information as may be necessary, the Director shall from time to time, after consultation with the advisory committee authorized under section [4025](#) of this title, appropriate representatives of the pool formed or otherwise created under section [4051](#) of this title, and appropriate representatives of the insurance authorities of the respective States, prescribe by regulation

- (1) chargeable premium rates for any types and classes of properties for which insurance coverage shall be available under section [4012](#) of this title (at less than the estimated risk premium rates under section [4014 \(a\)\(1\)](#) of this title, where necessary), and
- (2) the terms and conditions under which, and the areas (including subdivisions thereof) within which, such rates shall apply.

(b) Considerations for rates

Such rates shall, insofar as practicable, be

- (1) based on a consideration of the respective risks involved, including differences in risks due to land use measures, flood-proofing, flood forecasting, and similar measures.
- (2) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses, or, if less than such amount, consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase such insurance and with the purposes of this chapter,
- (3) adequate, together with the fee under paragraph (1)(B)(iii) or (2) of section [4014 \(a\)](#) of this title, to provide for any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section [4101](#) of this title), and
- (4) stated so as to reflect the basis for such rates, including the differences (if any) between the estimated risk premium rates under section [4014 \(a\)\(1\)](#) of this title and the estimated rates under section [4014 \(a\)\(2\)](#) of this title.

DISCUSSION DRAFT, SECTION 2(B)(1) ADDS:

(c) Actuarial rate properties

Subject only to the limitations provided under paragraphs (1) and (2) *of this subsection and to subsection (g)*, the chargeable rate shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section [4014 \(a\)\(1\)](#) of this title with respect to the following properties:

(1) Post-firm properties

Any property the construction or substantial improvement of which the Director determines has been started after December 31, 1974, or started after the effective date of the initial rate map published by the Director under paragraph (2) of section [4101](#) of this title for the area in which such property is located, whichever is later, except that the chargeable rate for properties under this paragraph shall be subject to the limitation under subsection (e) of this section.

(2) Certain leased coastal and river properties

Any property leased from the Federal Government (including residential and nonresidential properties) that the Director determines is located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure.

(d) Payment of certain sums to Director; deposits in Fund

With respect to any chargeable premium rate prescribed under this section, a sum equal to the portion of the rate that covers any administrative expenses of carrying out the flood insurance and floodplain management programs which have been estimated under paragraphs (1)(B)(ii) and (1)(B)(iii) of section [4014 \(a\)](#) of this title or paragraph (2) of such section (including the fees under such paragraphs), shall be paid to the Director. The Director shall deposit the sum in the National Flood Insurance Fund established under section [4017](#) of this title.

(e) Annual limitation on premium increases

Except with respect to properties described under paragraph (2) or (3) [11](#) of subsection (c) of this section, and notwithstanding any other provision of this chapter, the chargeable risk premium rates for flood insurance under this chapter for any properties within any single risk classification may not be increased by an amount that would result in the average of such rate increases for properties within the risk classification during any 12-month period exceeding 10 percent of the average of the risk premium rates for properties within the risk classification upon the commencement of such 12-month period.

(f) Adjustment of premium

Notwithstanding any other provision of law, if the Director determines that the holder of a flood insurance policy issued under this chapter is paying a lower premium than is required under this section due to an error in the flood plain determination, the Director may only prospectively charge the higher premium rate.

DISCUSSION DRAFT, SECTION 2(B)(2) ADDS:

“(g) NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENT OF AGRICULTURAL STRUCTURES.—Subject to section [1315\(a\)\(2\)\(B\)](#) and notwithstanding any other provision of this Act, the Director shall make flood insurance coverage available upon request for any agricultural structure described in section [1361\(d\)](#) that is located in any area identified by the Director as having special flood hazards. Such coverage shall be made available at chargeable premium rates that are based on estimated rates under section [1307\(a\)\(2\)](#) and are consistent with the provisions of section [1308\(b\)\(2\)](#) applicable to such rates.”

TITLE 42 > CHAPTER 50 > SUBCHAPTER I > § 4014. Estimates of premium rates

(a) Studies and investigations

The Director is authorized to undertake and carry out such studies and investigations and receive or exchange such information as may be necessary to estimate, and shall from time to time estimate, on an area, subdivision, or other appropriate basis

(1) the risk premium rates for flood insurance which

(A) based on consideration of the risk involved and accepted actuarial principles, and

(B) including

(i) the applicable operating costs and allowances set forth in the schedules prescribed under section [4018](#) of this title and reflected in such rates,

(ii) any administrative expenses (or portion of such expenses) of carrying out the flood insurance program which, in his discretion, should properly be reflected in such rates, and

(iii) any remaining administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section [4101](#) of this title) not included under clause (ii), which shall be recovered by a fee charged to policyholders and such fee shall not be subject to any agents' commissions, company expense allowances, or State or local premium taxes, would be required in order to make such insurance available on an actuarial basis for any types and classes of properties for which insurance coverage is available under section [4012 \(a\)](#) of this title (or is recommended to the Congress under section [4012 \(b\)](#) of this title);

(2) the rates, if less than the rates estimated under paragraph (1), which would be reasonable, would encourage prospective insureds to purchase flood insurance, and would be consistent with the purposes of this chapter, and which, together with a fee charged to policyholders that shall not be not subject to any agents' commission, company expenses allowances, or State or local premium taxes, shall include any administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section [4101](#) of this title); and

(3) the extent, if any, to which federally assisted or other flood protection measures initiated after August 1, 1968, affect such rates.

(b) Utilization of services of other Departments and agencies

In carrying out subsection (a) of this section, the Director shall, to the maximum extent feasible and on a reimbursement basis, utilize the services of the Department of the Army, the Department of the Interior, the Department of Agriculture, the Department of Commerce, and the Tennessee Valley Authority, and, as appropriate, other Federal departments or agencies, and for such purposes may enter into agreements or other appropriate arrangements with any persons.

(c) Priority to studies and investigations in States or areas evidencing positive interest in securing insurance under program

The Director shall give priority to conducting studies and investigations and making estimates under this section in those States or areas (or subdivisions thereof) which he has determined have evidenced a positive interest in securing flood insurance coverage under the flood insurance program.

(d) Parishes of Louisiana; premium rates

Notwithstanding any other provision of law, any structure existing on December 31, 1973, and located within Avoyelles, Evangeline, Rapides, or Saint Landry Parish in the State of Louisiana, which the Secretary determines is subject to additional flood hazards as a result of the construction or operation of the Atchafalaya Basin Levee System, shall be eligible for flood insurance under this chapter (if and to the extent it is eligible for such insurance under the other provisions of this chapter) at premium rates that shall not exceed those which would be applicable if such additional hazards did not exist.

(e) Eligibility of community making adequate progress on construction of flood protection system for rates not exceeding those applicable to completed flood protection system; determination of adequate progress

Notwithstanding any other provision of law, any community that has made adequate progress, acceptable to the Director, on the construction of a flood protection system which will afford flood protection for the one-hundred year frequency flood as determined by the Director, shall be eligible for flood insurance under this chapter (if and to the extent it is eligible for such insurance under the other provisions of this chapter) at premium rates not exceeding those which would be applicable under this section if such flood protection system had been completed. The Director shall find that adequate progress on the construction of a flood protection system as required herein has been only if

- (1) 100 percent of the project cost of the system has been authorized,
- (2) at least 60 percent of the project cost of the system has been appropriated,
- (3) at least 50 percent of the project cost of the system has been expended, and
- (4) the system is at least 50 percent completed.

(f) Availability of flood insurance in communities restoring discredited flood protection systems; criteria; rates

Notwithstanding any other provision of law, this subsection shall only apply in a community which has been determined by the Administrator of the Federal Emergency Management Agency to be in the process of restoring flood protection afforded by a flood protection system that had been previously accredited on a Flood Insurance Rate Map as providing 100-year frequency flood protection but no longer does so. Except as provided in this subsection, in such a community, flood insurance shall be made available to those properties impacted by the discreditation of the flood protection system at premium rates that do not exceed those which would be applicable to any property located in an area of special flood hazard, the construction of which was started prior to the effective date of the initial Flood Insurance Rate Map published by the Director for the community in which such property is located. A revised Flood Insurance Rate Map shall be prepared for the community to delineate as Zone AR the areas of special flood

hazard that result from the disaccreditation of the flood protection system. A community will be considered to be in the process of restoration if

- (1) the flood protection system has been deemed restorable by a Federal agency in consultation with the local project sponsor;
- (2) a minimum level of flood protection is still provided to the community by the disaccredited system; and
- (3) restoration of the flood protection system is scheduled to occur within a designated time period and in accordance with a progress plan negotiated between the community and the Federal Emergency Management Agency.

Communities that the Administrator of the Federal Emergency Management Agency determines to meet the criteria set forth in paragraphs (1) and (2) as of January 1, 1992, shall not be subject to revised Flood Insurance Rate Maps that contravene the intent of this subsection. Such communities shall remain eligible for C zone rates for properties located in zone AR for any policy written prior to promulgation of final regulations for this section. Floodplain management criteria for such communities shall not require the elevation of improvements to existing structures and shall not exceed 3 feet above existing grade for new construction, provided the base flood elevation based on the disaccredited flood control system does not exceed five feet above existing grade, or the remaining new construction in such communities is limited to infill sites, rehabilitation of existing structures, or redevelopment of previously developed areas.

The Administrator of the Federal Emergency Management Agency shall develop and promulgate regulations to implement this subsection, including minimum floodplain management criteria, within 24 months after October 28, 1992.

Where can I download the National Flood Insurance Act of 1968, as amended?

The National Flood Insurance Act of 1968, as amended, and The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001 et. seq. is available at <http://www.fema.gov/library/viewRecord.do?id=4430>.

What is the National Flood Insurance Program?

According to Federal Emergency Management Agency, *the Flood Insurance and Mitigation Administration (FIMA), a component of the Federal Emergency Management Agency (FEMA), manages [the National Flood Insurance Program \(NFIP\)](#). The three components of the NFIP are:*

- [Flood Insurance](#)
- [Floodplain Management](#)
- [Flood Hazard Mapping](#)

Nearly 20,000 communities across the United States and its territories participate in the NFIP by adopting and enforcing floodplain management ordinances to reduce future flood damage. In exchange, the NFIP makes Federally backed flood insurance available to homeowners, renters, and business owners in these communities. Community participation in the NFIP is voluntary.

Flood insurance is designed to provide an alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods. Flood damage is reduced by nearly \$1 billion a year through communities implementing sound floodplain management requirements and property owners purchasing of flood insurance. Additionally, buildings constructed in compliance with NFIP building standards suffer approximately 80 percent less damage annually than those not built in compliance.

In addition to providing flood insurance and reducing flood damages through floodplain management regulations, the NFIP identifies and maps the Nation's floodplains. Mapping flood hazards creates broad-based awareness of the flood hazards and provides the data needed for floodplain management programs and to actuarially rate new construction for flood insurance.

- The [NFIP Program Description](#) offers a more detailed overview and history of the program.
- Buying [flood insurance](#) is the best thing you can do to protect your home, your business, family, and financial security.

Source: <http://www.fema.gov/about/programs/nfip/index.shtm>

COALITION FOR THE CREATION OF AN AGRICULTURAL FLOOD HAZARD AREA UNDER THE NATIONAL FLOOD INSURANCE PROGRAM

DECEMBER 2011

On November 14th, 2011, a kick-off meeting was held by a coalition of local agencies and landowners interested in the creation of a new agricultural flood hazard area under the National Flood Insurance Program (NFIP). This new zone would apply to established agricultural areas that would otherwise be mapped into the 100-year floodplain and would help ensure that agriculture, and the communities it supports, continues to thrive.

Participants in the initial meetings include representatives from the following organizations:

- California Central Valley Flood Control Association
- California Farm Bureau
- Colusa County
- Landowners
- Reclamation District 108
- Reclamation District 1500
- Sacramento County
- Sacramento River Conservation Area Forum
- Sutter Butte Flood Control Agency
- Sutter County
- Yolo County
- Yolo County Farm Bureau
- Yuba County
- Yuba County Water Agency
- Yuba Sutter Farm Bureau

The coalition is in the initial stages of organization and invites participation from any interested agency, group, or individual. Three working committees were formed at the kick-off meeting that will be responsible for coordinating efforts in three general areas. These workgroups and their respective contact information are outlined below:

- 1. Financial Issues Technical Work Group (disaster relief and insurance)**
Scott Shapiro of Downey Brand
sshapiro@downeybrand.com
- 2. Building Restrictions Technical Work Group**
Ric Reinhardt of MBK Engineers
Reinhardt@mbkengineers.com
- 3. Lobbying and Outreach Work Group**
Kristi More of The Ferguson Group
kmore@tfgnet.com

The work groups will meet regularly and a meeting of the full coalition will occur sometime in January. If you are interested in learning more about this issue and how it may affect your community, please contact Scott Shapiro, Ric Reinhardt, and Kristi More for additional information.

PROPOSAL FOR AN AGRICULTURAL FLOOD HAZARD AREA

INTRODUCTION:

California is the top producer of agricultural products in the nation, with an average industry value of more than \$35 billion, which is 12.3 percent of the national output. It is estimated that more than 1 million jobs in California are agriculture related. While no other state has as much agricultural production, dozens of states have critically important agricultural economies, and cumulatively the agricultural economies of all of these states have a dramatic impact on the economy of the United States. In these states a significant portion of agricultural lands are being mapped within FEMA's regulated floodplain. In order for these states to continue to sustain a robust agricultural economy and discourage urbanization of the rural areas in the floodplain, changes are needed to the National Flood Insurance Program (NFIP) that will promote the sustainability of agriculture in the floodplain. The proposed changes will promote prudent floodplain management principles and minimize the risk of increased urbanization of the floodplain.

DISCUSSION:

Throughout the history of the United States, people have settled near waterways for reasons that include transportation, irrigation and water, aesthetics, and the fertile soils that benefitted from active floodplains. As the nation's population grew, so did the damage associated with flooding from these waterways. Landowners and river communities attempted to protect themselves from flooding by constructing levees around their property. During the 1960s, people began to question the effectiveness of structural facilities to reduce flood losses. Studies indicated that, although flood control structures continued to be built and reinforced, flood losses continued to increase. In response, the NFIP was established by Congress in 1968. The program works by allowing communities to receive federally-backed flood insurance, in return for the community regulating development within the established floodplain.

Through the NFIP FEMA regulates development in areas subject to flooding from a base flood, or a flood that has a 1-percent chance of occurring in any given year. Through the 1970s and 1980s, FEMA comprehensively mapped all communities in the United States within the base floodplain and delineated them on Flood Insurance Rate Maps (FIRMs). The original FIRMs showed areas protected by levees in a Zone X, not an SFHA bound by the requirements of the NFIP floodplain development regulations. These levees often had no engineering documentation supporting the level of protection provided by that levee. After years of repeat stress from flooding, changing hydrology and hydraulics within the levee systems, and changed engineering standards, many levees had become deficient in their ability to protect from the base flood. In 2001, the Map Modernization Program was initiated by FEMA to update FIRMs that had become outdated and digitize those maps to reduce paper and make them more easily accessible by the public.

As a result of FEMA's Map Modernization Program and the limited financial ability of most rural communities to improve their levee systems to meet FEMA's 100-year certification criteria, these rural agricultural communities have been, or will be, remapped into an SFHA. The restrictions on development in an SFHA, while effectively curbing development in the floodplain, do not provide the flexibility needed to sustain agriculture. The strict regulations have made reinvestment in agricultural operation facilities, commercial facilities in support of

agriculture, equipment repair facilities, livestock and crop processing facilities, housing for agricultural operators, or temporary farm worker housing financially infeasible and/or unattainable in these areas. Agriculture represents a necessary and vital component of our nation's economy. In addition, maintaining rural open space and agriculture is an integral component of prudent floodplain management. However, as currently implemented, the result of NFIP policies will be to displace vibrant agricultural communities with rural "ghost towns," which will have long term implications to the decline of agriculture in the floodplain.

PROPOSAL:

Legislative changes are required to allow the NFIP and its implementation to not devastate agricultural communities. Those changes are required to address the inability of these communities, after being mapped into the floodplain, to reinvest in the economic activities that make them strong, and to allow affordable and available flood insurance to help these communities after the rare flood event:

1. Congress should establish a FEMA flood zone for agriculturally-based communities to allow replacement or reinvestment development in historically agricultural floodplains for existing and a limited number of new structures. This program would not require expensive elevation of structures or dry flood proofing, but would still have requirements for wet flood proofing certain structures.
2. Congress should instruct FEMA for these special agricultural zones to adjust the NFIP rate to be more actuarially structured to evaluate the actual flood risk based on levees providing historical protection, as opposed to assuming that no protection actually exists. This would lower the base rates for people in lower risk areas while not affecting rates for frequent claims and higher risk areas.